

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:	)	Docket HWCA 20020004
	)	
Safety-Kleen Systems, Inc. (San Jose)	)	CONSENT ORDER
1021 Berryessa Road	)	
San Jose, California	)	Health and Safety Code
EPA ID NO. CAD059494310	)	Section 25187
	)	
Respondent.	)	
_____	)	

The State Department of Toxic Substances Control (“Department”) and Safety-Kleen (San Jose), Inc. (“Respondent”) enter into this Consent Order and agree as follows:

1. At all times material hereto as set forth in paragraph 3, *infra*, Respondent handled, treated, and stored hazardous waste at 1021 Berryessa Road, San Jose, California (“Site” or “Facility”) under the auspices of its Hazardous Waste Facility Permit (“Permit”).

2. On June 9, 2000, Respondent and 73 of its affiliated entities filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. 101-1330, as amended (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

2.1. Safety-Kleen continues to operate its business and manage its property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code; however, pursuant to a sales transaction with Clean Harbors, as of September 6, 2002, Clean Harbors now owns and operates the Facility.

2.2. On or about December 6, 2000, the Department filed a proof of claim in the chapter 11 reorganization case of the Respondent in the liquidated amount of \$175,000 plus unliquidated claims that was docketed by the claims agent in the Respondent's chapter 11 reorganization case as proof of claim number 16131 (the "Proof of Claim").

3. The Department inspected the Facility on the following dates:

3.1. March 27, 1998, and April 8, 9, 23, and 24, 1998;

3.2. April 24, 25, and 27, 2000; and

3.3. June 18, 19, and 20, 2001.

4. As a result of these inspections, the Department issued to Respondent Summaries of Violations, Notices of Violations, and/or Notices to Comply, collectively referred to herein as "the NOVs." Pursuant to its above-referenced inspections and the NOVs, the Department alleges the following violations:

4.1. Respondent violated sections III.E.1.a, III.H.2.a.1, and III.H.2.b of the Permit on or about November 20, 1997, when it (1) received a container of borane dimethyl sulfide with an incorrect waste code, (2) failed to reconcile the discrepancy with the generator or report it to the Department, and (3) failed to prevent a fire, extreme heat, or reaction, by decanting the borane dimethyl sulfide into another container.

4.2. Respondent violated sections III.E.1.a and III.E.3.a of the Permit on or about March 21, 1998, when Respondent placed hydrochloric acid into a drum that contained an incompatible waste or material.

4.3. Respondent violated Title 22 of the California Code of Regulations (“22 Cal. Code Reg.”), section 66264.195, subdivisions (a)(1) and (c), and section III.L.4.a of the Permit, on or about April 25, 2000, when it failed to inspect or to document the tank farm’s emergency high-low level alarm spill control systems.

4.4. Respondent violated 22 Cal. Code Regs. section 66268.50, subdivision (c), on or about July 23, 1998, when it stored four drums of mercury waste beyond one year.

4.5. Respondent violated 22 Cal. Code Regs. section 67450.3, subdivision (a)(13)(G), in or around July 1999, when it closed Transportable Treatment Unit (“TTU”) Number 04160201.AR without submitting the requisite certification.

4.6. Respondent violated 22 Cal. Code Regs. sections 66264.171, 66264.173, subdivision (b), and 66264.174, and sections III.C.1.h, III.C.1.b-c, and III.L.7 of the Permit on or about April 27, 2000, when it held waste in four leaking drums without detecting the leaks, transferring, or otherwise managing, the waste in accordance with the regulations.

4.7. Respondent violated 22 Cal. Code Regs. section 66264.33, and section III.L.3 of the Permit, on or about April 27, 2000, when it failed to test and maintain two emergency eyewash/showers located in the Inorganic Acid Storage Bay, Area 5, and the Non-Flammable Lab Pack Bay, Area 1.

4.8. Respondent violated 22 Cal. Code Regs. section 66264.35, and section III.P of the Permit on or about April 27, 2000, when it failed to maintain adequate aisle space in parts of the Transship 1 Bay and the Inorganic Lab Pack Bay.

4.9. Respondent violated 22 Cal. Code Regs. section 66264.175, subdivisions (a) and (b)(1), and section III.C.1.j.1, on or about April 27, 2000, when it failed to provide an impervious base under tanks and containers in the Tranship 1 Bay, the Inorganic Acid Bay, the Organic Treatment Storage Bay, and the Biological Treatment Area.

4.10. Respondent violated sections III.C.1.d.1, 3, and 5 of the Permit on or about April 27, 2000, when it failed to maintain adequate labels on at least 124 containers of hazardous waste.

4.11. Respondent violated section III.C.2.ii of the Permit on or about April 24-27, 2000, when it failed to remove accumulated precipitation from the Inorganic Treatment Secondary Containment Area within 24 hours of its detection.

4.12. Respondent violated 22 Cal. Code Regs. section 66264.16, subdivisions (a)(1)-(3), and sections III.M.1 and 3 of the Permit on or about April 27, 2000, when it failed to follow the Facility's approved training plan for three employees.

4.13. Respondent violated 22 Cal. Regs. sections 66264.37, subdivisions (a)(1) and (3)-(4), and 66264.53, subdivision (2), and sections III.N.2 and 6 of the Permit, on or about April 27, 2000, when it failed to make arrangements and/or to familiarize local emergency-response teams with its operations or provide them with copies of the Facility's contingency plan.

4.14. Respondent violated 22 Cal. Regs. section 66264.15, and sections III.L.1-4 of the Permit, on or about April 12, 16, 23, and 24, 2000, when it failed to

develop or follow a written schedule for inspecting and monitoring the Site, and when it failed to properly conduct inspections or to record inspections of the Site.

4.15. Respondent violated 22 Cal. Code Regs. section 66264.73, subdivision (b)(1), and section III.Q.2 of the Permit, on or about July 1, 7 and 8, 1998, and April 11 and 16, 2000, when it failed to maintain in the operating record a description and the quantity of the waste received and the methods and dates of its transfer, treatment, or disposal.

4.16. Respondent violated section III.C.f.1 of the Permit on or about April 27, 2000, when it stored 15 more drums than it was authorized to store at the Facility.

4.17. Respondent violated 22 Cal. Code Regs. section 66262.23, subdivisions (a)(1) and (a)(4), and section III.H.e of the Permit on or about July 1, 7, and 8, 1998, when it failed to properly sign manifests for waste that was sent to Missouri, and to provide the Department with a copy of each manifest.

4.18. Respondent violated 22 Cal. Code Regs. sections 66264.171 and 66264.173, subdivision (b), and sections III.C.1.g and h of the Permit on or about June 18-20, 2001, when it held waste in a leaking Super-sack container holding hazardous waste without transferring or otherwise managing the waste in accordance with the regulations.

4.19. Respondent violated section III.C.2.b.1 of the Permit on or about June 18-20, 2001, when it failed to provide a secondary containment system in Area 13 with a continuous base that is impervious to the waste being stored.

4.20. Respondent violated 22 Cal. Code Regs. section 66264.15, subdivision (c), and sections III.L.5.a and III.L.6 of the Permit on or about June 18-20, 2001, when it failed to remedy cracks in the floor in Area 13 and holes in the exterior shell of an air stripper (T48), and when it failed to inspect the air stripper daily.

4.21. Respondent violated 22 Cal. Code Regs. section 66264.15, and section III.7 of the Permit on or about June 18-20, 2001, when it failed to properly conduct inspections or to record the inspections in an inspection log or summary.

5. A dispute exists between the Department and Respondent regarding the alleged violations, in that the Department alleges and Respondent denies that it committed said violations.

6. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

7. Jurisdiction exists pursuant to California Health and Safety Code section 25187.

8. In consideration of the resolution of this contested matter pursuant to the terms of this Consent Order, Respondent waives the right to a hearing in this matter.

9. This Consent Order shall constitute full and complete settlement of all of the violations that are alleged in this Consent Order, in the NOVs, or in the inspection reports for the inspections referenced in paragraph 3.

10. Although Respondent does not admit any of the violations alleged above, Respondent does desire to work with the Department to resolve all issues as expeditiously as possible.

## SCHEDULE FOR COMPLIANCE

11. Respondent has demonstrated to the Department that the alleged violations set forth in paragraph 4, above, have been corrected. Accordingly, no further corrective action or submittal is required.

## PENALTY ASSESSMENT

12. The Department assesses a penalty against Respondent in the following amounts:

12.1. For those alleged violations as set forth in paragraphs 4.1 to 4.17 (which occurred before June 9, 2000, the date of Respondent's voluntary bankruptcy petition), the Department assesses a penalty in the amount of \$248, 934 the "Prepetition Penalty Allowance"). This amount includes the Department's unreimbursed costs in the amount of \$26,750 arising from Respondent's alleged pre-petition violations.

12.2. For those alleged violations as set forth in paragraphs 4.18 to 4.21 (which occurred after June 9, 2000), the Department assesses a penalty in the amount of \$14,700 (the "Post-petition Penalty Allowance"). This amount includes the Department's unreimbursed costs in the amount of \$1,500 arising from Respondent's alleged post-petition violations.

12.3. For the alleged violations that occurred prior to June 9, 2000, the filing date of Respondent's bankruptcy petition, the amount and terms of the payment of the penalty, including the Department's unreimbursed costs, shall be made in the amount and priority as provided by the Bankruptcy Code, the Bankruptcy Court, and the Debtor's Plan of Reorganization ("reorganization plan") and will be treated as a prepetition

general unsecured claim. Nothing in this Order shall prohibit the Department from objecting to provisions of the reorganization plan, including, but not limited to, those that may adversely affect payment of this penalty to the Department.

12.4. Within 45 days of the effective date of this Consent Order, Respondent shall seek an order of the Bankruptcy Court to:

12.4.1. Authorize the Respondent to enter into this Consent Order.

12.4.2. Allow the Department a prepetition, general unsecured, liquidated claim in Respondent's bankruptcy proceedings in the amount of the Prepetition Penalty Allowance to be paid in accordance with the reorganization plan.

12.4.2. Allow the Department an administrative expense claim in Respondent's bankruptcy proceedings in the amount of the Post-petition Penalty Allowance to be paid in accordance with the reorganization plan.

12.4.3. Authorize the claims agent in Respondent's bankruptcy proceedings to reflect in the claims register (A) the Prepetition Penalty Allowance portion of the Proof of Claim as a general unsecured, liquidated claim, and (B) the Post-petition Penalty Allowance portion of the Proof of Claim as an administrative expense claim, consistent with this Consent Order.

12.5. Payments under this Consent Order shall be sent to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:



Paul Kewin, Unit Chief  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, CA 95826

12.6. Either party may unilaterally rescind its consent to this Consent Order, but only in the event the Bankruptcy Court does not approve the claims and/or payments as specified in paragraphs 12.4.1 and 12.4.2 of this Consent Order within sixty (60) days from the Court's receipt of this Consent Order, and in no event more than one hundred eighty (180) days after the effective date of this Consent Order. The party seeking to rescind its consent shall be required to provide written notice to the other party of its decision to rescind consent at least thirty (30) days before the rescission will take effect. The party receiving notice of the other party's intent may contact the rescinding party to attempt to avoid said rescission, before the rescission takes effect. The parties agree to cooperate with each other in good faith to avoid rescission, to the extent possible.

#### OTHER PROVISIONS

13. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

14. Endangerment During Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the Site or in the surrounding area or to the environment, the

Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

15. Liability: Except as otherwise provided in this Consent Order, nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

16. Site Access: The parties acknowledge that as of September 6, 2002, Respondent no longer owns, operates, or controls the Site, or the Facility. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that the Department or any agency may otherwise have by operation of law. Subject to any statutory or legal limitations that may apply and that are asserted by the current owner or operator of the Site, the Department and its authorized representatives may enter and move freely about the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site, and conducting such tests as the Department may deem necessary. Respondent shall permit the Department, subject to any legitimate claims of confidentiality, or privilege, that it reasonably may assert, to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

17. Government Liabilities: The Department shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Consent Order, nor shall the Department be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

18. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expirations of this time, request an extension of time in writing. The extension request shall include a justification for the delay.

19. Extensions Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

20. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

21. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by California Health and Safety Code section 25188, and other applicable provisions of law.

22. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors,

consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

23. Integration: This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Consent Order.

Dated: 4/10/03

(Original signed by Virgil W. Duffie)  
Virgil W. Duffie, Senior Corporate Counsel  
Safety-Kleen Systems, Inc.

Date: 4/10/03

(Original signed by Watson Gin for Norman Riley)  
Norman Riley, Chief  
Statewide Compliance Division  
Department of Toxic Substances Control